

Before the Senate Judiciary Committee

March 13, 2009

Testimony of Barbara A. Bessey, CP

Chair of Paralegal Section of the State Bar of Montana

**State Bar of Montana
PO Box 577
Helena, MT 59624
(406) 442-7660**

House Bill 301

Submitted to the Senate Judiciary Committee as part of the legislative hearing on HB 301 to include paralegal services in attorney fee awards.

Hearing Date: March 13, 2009

Before the Senate Judiciary Committee

March 13, 2009

Testimony of Barbara A. Bessey, CP

Chair of Paralegal Section of the State Bar of Montana

House Bill 301

Good morning, Mr. Chairman and members of the Committee. For the record my name is Barbara A. Bessey [spell last name]. I am a Certified Paralegal. I am speaking to you today as the Chair of the Paralegal Section of the State Bar of Montana. Thank you for the opportunity to testify this morning.

I have been employed in the legal profession for 25 years, and as a paralegal for 16 years. I received a Bachelors of Arts degree in 1993 while employed as a legal secretary/paralegal trainee, and became certified by the National Association of Legal Assistants in 1997. I am a member of the National Association of Legal Assistants (NALA) and its affiliate Montana Association of Legal Assistants (MALA). I am dedicated and passionate about my career as a paralegal. It is not just a job. I am a professional, and I volunteer my time to three professional organizations.

I am here to introduce this legislation to you generally. Mr. Chairman, may I introduce six District Court Orders and a Montana Attorney and Paralegal Fee Chart as supporting evidence for today's hearing. Thank you, Mr. Chairman. Previously when the bill was before the House Judiciary, I had colleagues testify as to the qualifications required as a paralegal and about the qualifications and benefits of being a certified paralegal. Because the bill is being amended pursuant to a request of the Executive Committee of the State Bar, these colleagues are not here today to testify. However, I believe each of them will be submitting written document supporting the legislation to the Senate Judiciary Committee.

I would like to generally testify that the Paralegal Section has been working on this legislation for many years. The paralegal profession is continually evolving. The Paralegal Section was established in 1999, and 140 paralegals were voluntarily registered. Today, the Section has 164 voluntarily registered members. It was our hope that this legislation, which clearly defined the title of paralegal and the qualifications that are associated with the title, clarify by statute who we are as professionals. By deleting New Section 2, subsection (2), this will be up to the Courts to determine after time and money is spent by the parties briefing and litigating the issue of who qualifies as a paralegal. These qualifications

were voiced before the House Judiciary Committee and will remain part of the legislative history of the statute to be used by the Courts in there determinations.

We were aware that we were going to receive some opposition to the definition of "paralegal" with the parameters of the qualifications that we were fair and just to give the Courts guidelines that are being established in the paralegal industry nationwide today. A Registered Nurse or a Chemical Engineer, although working for a law firm, are not paralegals, but consultants, and their services can still be billed to the client. Paralegals perform specifically-delegated legal work that requires a knowledge of legal concepts such that, absent the paralegal, the attorney would perform the assigned tasks. Our definition in New Section 2, sub-section (1) deviates from the ABA definition by deleting "work for which a lawyer is responsible", and replaced it with "in the absence of a paralegal, would be performed by an attorney", which is what paralegal work is. Legal secretaries also do not have a complete knowledge of legal and ethical concepts that a paralegal learns through education. We have our own unique career path that requires education, certification, and experience, which gives us the right to be titled a "paralegal".

An individual such as a Registered Nurse, for example, certainly could work as a nurse paralegal if she completes a paralegal course of 18 credits or takes either the CLA/CP examination offered by NALA or the PACE examination offered by the National Federation of Paralegals Association (NFPA). The fees of a nurse paralegal with proper credentials would then be recoverable after a judgment.

The legislation in part was drafted with a strong definition and qualification requirements to safeguard the general public of Montana from possible unauthorized practices of law.

As with any type of business, rising costs define how businesses are operated. In Montana with its rural population, affordable legal costs are paramount to equal justice. Paralegals are educated and trained to assist attorneys in their practice of law. For many firms, tasks that were once handled by an attorney are now completed by paralegals at a lower rate to their clients. However, if the firm is successful in a judgment for their client, fees that the client has paid for a paralegal's work under the present statute, Section 37-6-215, MCA are not reimbursable. It is somewhat of a "catch 22". If the attorney had spent more of his time on the case doing everything that the paralegal did, the client would have been reimbursed for those fees, but, only after he had already been billed and paid for those fees

– which means more up front money out-of-pocket. If every attorney in Montana had to spend considerably more hours on every case, he would certainly take on less cases. There is already a huge need for low cost and pro bono legal services in Montana.

Many law firms over the course of the last few years have included paralegal fees as part of their request for attorney fees as a means of reducing costs to their clients. However, judges in Montana have denied reimbursement of paralegal fees pursuant to Section 37-6-215, MCA, which is the statute we propose be amended to include paralegal fees as a component of attorney fees. The six Orders given to you came from the 4th, 5th and 13th Judicial District Courts.

Mr. Chairman and members of the committee, thank you for the opportunity today to speak to you. I urge you to please assist the legal community in providing cost effective legal services to Montanans. I ask for passage of House Bill 301 as amended. Thank you.

Prepared by:

Barbara A. Bessey, CP
Chair of Paralegal Section of the State Bar of Montana
404-444-4493
406-444-1394
bbessey@mt.gov